

CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT (EXCERPT)
Act 295 of 2008

460.1047 Cost of service to be recovered by electric provider; recovery of incremental costs of compliance; calculation; modification of revenue recovery mechanism; excess costs; refund to customer classes; certain actual costs considered as costs of service.

Sec. 47. (1) Subject to the retail rate impact limits under section 45, the commission shall consider all actual costs reasonably and prudently incurred in good faith to implement a commission-approved renewable energy plan by an electric provider whose rates are regulated by the commission to be a cost of service to be recovered by the electric provider. Subject to the retail rate impact limits under section 45, an electric provider whose rates are regulated by the commission shall recover through its retail electric rates all of the electric provider's incremental costs of compliance during the 20-year period beginning when the electric provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved.

(2) Incremental costs of compliance shall be calculated as follows:

(a) Determine the sum of the following costs to the extent those costs are reasonable and prudent and not already approved for recovery in electric rates as of the effective date of this act:

(i) Capital, operating, and maintenance costs of renewable energy systems or advanced cleaner energy systems, including property taxes, insurance, and return on equity associated with an electric provider's renewable energy systems or advanced cleaner energy systems, including the electric provider's renewable energy portfolio established to achieve compliance with the renewable energy standards and any additional renewable energy systems or advanced cleaner energy systems, that are built or acquired by the electric provider to maintain compliance with the renewable energy standards during the 20-year period beginning when the electric provider's plan is approved by the commission.

(ii) Financing costs attributable to capital, operating, and maintenance costs of capital facilities associated with renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(iii) Costs that are not otherwise recoverable in rates approved by the federal energy regulatory commission and that are related to the infrastructure required to bring renewable energy systems or advanced cleaner energy systems used to achieve compliance with the renewable energy standards on to the transmission system, including interconnection and substation costs for renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(iv) Ancillary service costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards, regardless of the ownership of a renewable energy system or advanced cleaner energy technology.

(v) Except to the extent the costs are allocated under a different subparagraph, all of the following:

(A) The costs of renewable energy credits purchased under this act.

(B) The costs of contracts described in section 33(1).

(vi) Expenses incurred as a result of state or federal governmental actions related to renewable energy systems or advanced cleaner energy systems attributable to the renewable energy standards, including changes in tax or other law.

(vii) Any additional electric provider costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards.

(b) Subtract from the sum of costs not already included in electric rates determined under subdivision (a) the sum of the following revenues:

(i) Revenue derived from the sale of environmental attributes associated with the generation of renewable energy or advanced cleaner energy systems attributable to the renewable energy standards. Such revenue shall not be considered in determining power supply cost recovery factors under section 6j of 1939 PA 3, MCL 460.6j.

(ii) Interest on regulatory liabilities.

(iii) Tax credits specifically designed to promote renewable energy or advanced cleaner energy.

(iv) Revenue derived from the provision of renewable energy or advanced cleaner energy to retail electric customers subject to a power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, of an electric provider whose rates are regulated by the commission. After providing an opportunity for a contested

case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. In addition, an electric provider whose rates are regulated by the commission may at any time petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

(v) Revenue from wholesale renewable energy sales and advanced cleaner energy sales. Such revenue shall not be considered in determining power supply cost recovery factors under section 6j of 1939 PA 3, MCL 460.6j.

(vi) Any additional electric provider revenue considered by the commission to be attributable to the renewable energy standards.

(vii) Any revenues recovered in rates for renewable energy costs that are included under subdivision (a).

(3) The commission shall authorize an electric provider whose rates are regulated by the commission to spend in any given month more to comply with this act and implement an approved renewable energy plan than the revenue actually generated by the revenue recovery mechanism. An electric provider whose rates are regulated by the commission shall recover its commission approved pre-tax rate of return on regulatory assets during the appropriate period. An electric provider whose rates are regulated by the commission shall record interest on regulatory liabilities at the average short-term borrowing rate available to the electric provider during the appropriate period. Any regulatory assets or liabilities resulting from the recovery costs of renewable energy or advanced cleaner energy attributable to renewable energy standards through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, shall continue to be reconciled under that section.

(4) If an electric provider's incremental costs of compliance in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission are in excess of the revenue recovery mechanism as adjusted under section 49 and in excess of the balance of any accumulated reserve funds, subject to the minimum balance established under section 21, the electric provider shall immediately notify the commission. The commission shall promptly commence a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and modify the revenue recovery mechanism so that the minimum balance is restored. However, if the commission determines that recovery of the incremental costs of compliance would otherwise exceed the maximum retail rate impacts specified under section 45, it shall set the revenue recovery mechanism for that electric provider to correspond to the maximum retail rate impacts. Excess costs shall be accrued and deferred for recovery. Not later than the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, for an electric provider whose rates are regulated by the commission, the commission shall determine the amount of deferred costs to be recovered under the revenue recovery mechanism and the recovery period, which shall not extend more than 5 years beyond the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission. The recovery of excess costs shall be proportional to the retail rate impact limits in section 45 for each customer class. The recovery of excess costs alone, or, if begun before the expiration of the 20-year period, in combination with the recovery of incremental costs of compliance under the revenue recovery mechanism, shall not exceed the retail rate impact limits of section 45 for each customer class.

(5) If, at the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, an electric provider whose rates are regulated by the commission has a regulatory liability, the refund to customer classes shall be proportional to the amounts paid by those customer classes under the revenue recovery mechanism.

(6) After achieving compliance with the renewable energy standard for 2015, the actual costs reasonably and prudently incurred to continue to comply with this subpart both during and after the conclusion of the 20-year period beginning when the electric provider's plan is approved by the commission shall be considered costs of service. The commission shall determine a mechanism for an electric provider whose rates are

regulated by the commission to recover these costs in its retail electric rates, subject to the retail rate impact limits in section 45. Remaining and future regulatory assets shall be recovered consistent with subsections (2) and (3) and section 49.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."